

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

AMERICAN WHITEWATER et al.,  
Plaintiffs,  
vs.  
ELECTRON HYDRO, LLC, et al.,  
Defendants.

No. 2:16-cv-00047-JCC

**THIS DOCUMENT RELATES TO:  
C16-cv-47-JCC**

**PARTIES' STIPULATION AND  
~~PROPOSED~~ ORDER RE  
SETTLEMENT AND DISMISSAL**

1 Plaintiffs American Whitewater, et al. and Defendants Electron Hydro, LLC, et al. hereby  
2 respectfully file this stipulation and proposed order to voluntarily dismiss this case pursuant to  
3 FED. R. CIV. P. 41(a)(2).

4 *Whereas*, Plaintiffs filed this case on January 12, 2016, alleging that Defendants had  
5 violated and continue to violate Section 9 of the Endangered Species Act (“ESA”), 16 U.S.C. §  
6 1538, by causing “take” of ESA-listed Chinook salmon, steelhead trout, and bull trout by  
7 operations of the Electron Hydroelectric Project on the Puyallup River in Washington (Dkt. #1);

8 *Whereas*, Plaintiffs alleged that to lawfully operate the project, Defendants are required to  
9 obtain incidental take permits under Section 10(a)(1)(B) of the ESA, 16 U.S.C. § 1539(a)(1)(B).  
10 (Dkt. #1);

11 *Whereas*, in their original and operative pleadings (Dkt. #30), Plaintiffs sought and seek  
12 as relief, among other things, that the Court order Defendants to cease diverting water and fish  
13 from the Puyallup River in the period before Defendants obtain incidental take permits under  
14 Section 10(a)(1)(B) of the ESA from the National Marine Fisheries Service (“NMFS”) and from  
15 the U.S. Fish and Wildlife Service (“USFWS”);

16 *Whereas*, on June 18, 2021, upon motions for preliminary relief, the Court ordered that  
17 Defendants shall not open the project intake and divert water or fish in the period before they  
18 obtain incidental take permits under Section 10(a)(1) of the ESA from NMFS and USFWS (Dkt.  
19 #58);

20 Accordingly, Plaintiffs and Defendants hereby agree and stipulate that:

- 21 1. Defendants shall not open the project intake and divert water or fish from the Puyallup  
22 River before they obtain from NMFS and USFWS incidental take permits under Section 10(a)(1)  
23 of the ESA that address effects of the actions on Chinook, steelhead trout, and bull trout;
- 24 2. Defendants shall provide Plaintiffs with notice of their submission of any final  
25 application to NMFS and/or USFWS, and any proposed Habitat Conservation Plan and  
26 supporting materials, for permits under Section 10(a)(1) of the ESA;

3. Defendants shall notify Plaintiffs within five (5) days of the receipt of any permits under Section 10(a)(1) of the ESA from NMFS and USFWS;

4. Defendants shall notify Plaintiffs seven (7) days before they open the intake;

5. Defendants shall not perform in-water work at the headworks site at the project without agency permits or other authority to do so;

6. Defendants shall pay Plaintiffs \$225,000 in order to satisfy any and all claims for attorneys' fees, costs, or other expenses that might be brought and may be available to Plaintiffs in this case. Defendants' agreement to pay Plaintiffs that sum does not in any way constitute any admission by Defendants as to any fact alleged or any liability for any claim or claims alleged in this case. Defendants shall pay Plaintiffs that sum within 45 days of a court order dismissing this case.

7. The Court shall dismiss this case with prejudice but retain jurisdiction to enforce the terms of the parties' stipulation. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 381 (1994).

Date: March 2, 2022.

Respectfully submitted,

/s/ Peter M. K. Frost

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Attorney for Defendants

Pursuant to the stipulation of the parties, IT IS SO ORDERED.

DATED this 25th day of March 2022.

A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE